

The Hon. John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ESTHER HOFFMAN; SARAH DOUGLASS; ANTHONY KIM; and IL KIM and DARIA KIM, husband and wife and the marital community comprised thereof, on behalf of themselves and all others similarly situated.

Plaintiffs,

V.

TRANSWORLD SYSTEMS
INCORPORATED; PATENAUME AND
FELIX, A.P.C; MATTHEW CHEUNG, and
the marital community comprised of
MATTHEW CHEUNG and JANE DOE
CHEUNG; and DOES ONE THROUGH
TEN.

Defendants.

I. INTRODUCTION

Defendants Patenaude and Felix, A.P.C.’s (“P & F’s”) and Matthew Cheung’s (“Cheung’s”) Motion for Summary Judgment (Dkt. #30), which Transworld Systems Incorporated (“TSI”) joined (Dkt. #32), is moot. Accordingly, the Court should deny the motion.

PLAINTIFFS' RESPONSE TO MOTION
FOR SUMMARY JUDGMENT AND
JOINDER IN MOTION- 1
(Case No. 2:18-cv-01132 JCC)

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II. FACTS AND ARGUMENT

On November 2, 2018, the Court, upon a motion by the Defendants (Dkt. ## 15, 17), entered an Order dismissing Plaintiffs' claims against P & F, Cheung, and TSI (Dkt. #29). In its Order, the Court dismissed all of Plaintiffs' claims with prejudice, except the Court dismissed Plaintiffs' claim for violation of RCW 19.16.250(16) and all of Plaintiff Sarah Douglass's claims without prejudice. With respect to the claims that were dismissed without prejudice, the Court granted the Plaintiffs leave to file an amended complaint within thirty days of November 2, 2018.

On November 5, 2018, P & F and Cheung filed Defendants P & F's and Cheung's Motion for Summary Judgment ("Motion for Summary Judgment") (Dkt. #31). On November 8, 2018, TSI filed Defendant TSI's Notice of Joinder and Joinder to Motion for Summary Judgment ("Joinder") (Dkt. #32). On November 13, 2018, the Plaintiffs filed Plaintiffs' Motion for Reconsideration/Clarification of November 2, 2018 Order Granting In Part and Denying In Part Defendant P & F's and Cheung's Motion to Dismiss and Defendant TSI's Joinder to the Motion to Dismiss ("Motion for Reconsideration") (Dkt. # 33). On December 6, 2018, the Court entered a Minute Order (Dkt. #37) requesting a response from TSI to the portion of the Motion for Reconsideration addressing the Plaintiffs' CPA claims against it. The Court did not request a response from P & F or Cheung on the portions of the Motion for Reconsideration addressing the dismissal of Plaintiffs' claims against them.

Plaintiffs currently have no pending claims against any of the defendants, and it appears likely that no claims against P & F and Cheung will be reinstated. By not requesting a response to the Motion for Reconsideration from P & F and Cheung, it appears that the Court will deny the Motion for Reconsideration as to Plaintiffs' claims against P & F and

1 Cheung. *See* LCR 7(h)(3) (no motion for reconsideration will be granted without a request
2 from the court for a response from the non-moving party). Because the Plaintiffs did not file
3 an amended complaint within thirty days of November 2, 2018, no claims against P & F and
4 Cheung will be asserted through amendment. While Plaintiffs' CPA claims against TSI are
5 under reconsideration, currently all of Plaintiffs' claims are dismissed.
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7 Because Plaintiffs currently have no active claims, there is no actual or live
8 controversy between Plaintiffs and Defendants; thus, Defendants' Motion for Summary
9 Judgment is moot. *Foster v. Carson*, 347 F.3d 742, 745 (9th Cir. 2003) (a case is moot where
10 no actual or live controversy exists, and a federal court has no jurisdiction to hear a case that
11 is moot). Therefore, Defendants' Motion for Summary Judgment and Joinder should be
12 denied as moot. *Id.*

13 Even if the Court finds that Plaintiffs' Motion for Reconsideration, as it pertains to
14 their CPA claims against TSI, creates an active controversy between Plaintiffs and TSI that is
15 relevant to the Motion for Summary Judgment and Joinder, the Motion for Summary
16 Judgment and Joinder should nevertheless be denied.¹ Plaintiffs hereby incorporate all of
17 their arguments relating to their CPA claims against TSI that are asserted in Plaintiffs'
18 Motion for Reconsideration. TSI presents no unique arguments in its Joinder to P & F's and
19 Cheung's Motion for Summary Judgment that relate to Plaintiffs' CPA claims against it, and
20 there is no argument in the Motion for Summary Judgment or Joinder that expands on P &
21 F's and Cheung's arguments in the Motion to Dismiss and TSI's joinder in it. Consequently,
22 if the Court reinstates Plaintiffs' CPA claims against TSI, then the Court should deny the
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26 ¹ Plaintiffs can find no case law explaining whether a motion for reconsideration creates an active controversy
for the purpose of evaluating the mootness of a motion for summary judgment.

1 Motion for Summary Judgment and TSI's Joinder in it.

2 TSI will not be prejudiced by denial of the Motion for Summary Judgment and
3 Joinder. Should the Court rule on the Motion for Reconsideration that Plaintiffs' CPA claims
4 against TSI should not be reinstated, there will conclusively be no active controversy
5 between Plaintiffs and TSI.² If the Court reinstates Plaintiffs' CPA claims against TSI, TSI
6 can file its own Motion for Summary Judgment after an appropriate period of discovery.³
7 Consequently, the Court should deny the Motion for Summary Judgment and Joinder as it
8 relates to Plaintiffs' claims against all defendants.

10 **III. CONCLUSION**

11 Plaintiffs have no pending claims against Defendants. Therefore, their Motion for
12 Summary Judgment is moot and the Court should deny the motion. A proposed Order is
13 submitted with this response.

14 DATED December 17, 2018.
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24 ² Plaintiffs maintain that the current state of dismissal of all of Plaintiffs' claims makes moot the Motion for
25 Summary Judgment and Joinder. Only if the Court reinstates Plaintiffs' CPA claims against TSI will there again
26 be an active controversy for the purposes of a Motion for Summary Judgment and the mootness thereof.

³ Because P & F and Cheung filed its Fed. R. Civ. P. 12(b)(6) motion for dismissal shortly after they were
served with Plaintiffs' Amended Complaint and TSI joined in the motion, Plaintiffs have conducted no
discovery.

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